



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201043042

Uniform Issue List: 402.00-00

AUG 06 2010

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SE: T!EP: RA: JZ

Legend:

Taxpayer A	=	XXXXXXXXXXXXXXXXXX
Company A	=	XXXXXXXXXXXXXXXXXX
Financial Institution A	=	XXXXXXXXXXXXXXXXXX
Financial Institution B	=	XXXXXXXXXXXXXXXXXX
Financial Institution C	=	XXXXXXXXXXXXXXXXXX
Account A	=	XXXXXXXXXXXXXXXXXX
Form A	=	XXXXXXXXXXXXXXXXXX
Financial Advisor G	=	XXXXXXXXXXXXXXXXXX
Amount A	=	XXXXXXXXXXXXXXXXXX
Date 1	=	XXXXXXXXXXXXXXXXXX
Date 2	=	XXXXXXXXXXXXXXXXXX
Date 3	=	XXXXXXXXXXXXXXXXXX
Date 4	=	XXXXXXXXXXXXXXXXXX
Date 5	=	XXXXXXXXXXXXXXXXXX
Date 6	=	XXXXXXXXXXXXXXXXXX

Date 7 = XXXXXXXXXXXXXXXX
Plan X = XXXXXXXXXXXXXXXX
Month 1 = XXXXXXXXXXXXXXXX
Year 1 = XXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

This letter is in response to your request dated July 31, 2009, submitted on your behalf by your authorized representative, in which you requested a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age represents that she received a distribution from Plan X totaling Amount A. Taxpayer A asserts that her failure to accomplish a rollover of Amount A within the 60-day period prescribed by section 402(c)(3) was due to an error made by Financial Advisor G of Financial Institution B. Taxpayer A also represents that Amount A has not been used for any other purpose.

Taxpayer A represents that she participated in Plan X, which was maintained by Company A. After suffering a disability sometime in Year 1, Taxpayer A retired from her position with Company A. On Date 1, the administrators of Plan X issued a letter to Taxpayer A, indicating that the distribution qualified as an eligible rollover distribution. Prior to making the election to rollover, Taxpayer A consulted with Financial Advisor G of Financial Institution B regarding setting up an appropriate qualified account. With his assistance, Taxpayer A completed Form A which was submitted to Financial Institution A on Date 2, in order to create a qualified account into which Amount A would be deposited. In Month 1, Financial Institution A was acquired by Financial Institution C. On Date 3, Plan X issued a check in Amount A payable to Financial Institution A for the benefit of (FBO) Taxpayer A. However, the application was not processed and on Date 4, Financial Institution C instead deposited Amount A into a pre-existing, non-qualified account which Taxpayer A maintained with Financial Institution C. Thereafter, Financial Institution C requested that Taxpayer A submit a new application because it had not received the Initial Application or a letter of instructions.

Taxpayer A represents further that, on Date 5, with the assistance of Financial Advisor G, she completed a second application to establish an IRA with Financial Institution C to complete the rollover of Amount A. The revised application was processed on Date 6, a date within the 60-day rollover period; however, the rollover account was never funded because Amount A had been deposited into a non-qualified

account. Financial Institution C failed to transfer Amount A into the newly established IRA and Financial Advisor G did not follow up with Financial Institution C to confirm that Amount A had, in fact, been transferred to an IRA. As a result, Taxpayer A was unaware of the incorrect deposit errors until Date 7, when Taxpayer A contacted Financial Institution B regarding the decline in value of her account.

Documentation provided shows that Financial Advisor G incorrectly deposited Amount A into Account A, a non-IRA account. Specifically, Financial Advisor G has provided a statement under penalty of perjury admitting that he made a mistake in depositing the distribution into Account A even though Taxpayer A had informed him that she intended to establish a qualified account for the purpose of rolling over the distribution from Plan X.

Documentation also shows that for calendar Year 1, Taxpayer A received a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., showing a Plan X distribution to Taxpayer A with respect to Year 1 for Amount A. Box 7 (Distribution Code(s)) of said Form 1099-R was coded "G" indicating a "Direct Rollover" to a qualified plan.

Based on the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount A from Plan X.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1, of the Income Tax Regulations (Regulations) Q&A-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that his failure to accomplish timely rollovers was caused by errors made by Financial Advisor G of Financial Institution C, which resulted in Amount A being deposited into Account A, a non-IRA account.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount A into an IRA will be considered a valid rollover contribution within the meaning of section 402(c)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

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Page 5

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If you wish to inquire about this ruling, please contact XXXXXXXXXXXX (ID XX-XXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,

A handwritten signature in cursive script that reads "Donzell Littlejohn".

Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose